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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**CRIMINAL APPELLATE JURISDICTION**

CRIMINAL REVN. APPLICATION NO. 502 OF 2006

Shri Ganesh Vasant Kulkarni ... Applicant

V/s

Sou. Charulata Ganesh Kulkarni ... Respondent

Mr. U.P. Warunjikar for the applicant.

**CORAM: S. B. MHASE &**
**SMT. NISHITA MHATRE, JJ.**

**DATED: 12TH FEBRUARY, 2007.**

**P.C.**:

1. Heard.

2. The order passed by the Family Court No.1, Pune directing the revision petitioner to pay an amount of Rs.3,000/- per month to the respondent No.1 and Rs.1,000/- per month to the respondent No.2 by way of monthly maintenance from the date of the filing of the petition and cost Rs.1000/-, is under challenge.

3. The said order was passed under Section 125 of the Criminal Procedure Code. So far as the husband and wife

are concerned, they are admittedly residing separately. We asked the learned counsel whether prior to the filing of the petition under Section 125 any arrangement for maintenance was made. The learned counsel was fair enough to say that no such arrangement was made prior to that. Because that is one of the aspect whether husband has neglected to maintain the wife. Then the learned counsel submitted that the application for restitution of conjugal rights filed by the wife has not been properly considered by the Family Court No.1. However, we find that the Family Court No.1 considered in para 11 of the judgment that except filing a petition no sincere efforts for restitution of conjugal rights have been made by the respondent husband. The Trial Court had an opportunity to observe the parties throughout the proceedings and, therefore, that is the observation which has been made by the Trial Court. Under the circumstances, we do not want to say that the Trial Court has not considered it properly. Apart from that, an appropriate decree in due course will be passed in an application for restitution of conjugal rights and if the decree is passed in favour of the husband, appropriate proceeding under Section 127 of the Criminal Procedure Code is permissible. At that time, the situation can be considered. Then the learned counsel submitted that the judgment suffers from jurisdictional

error because the quantum has been wrongly fixed. It is pertinent to note that it is an admitted position that the salary of the revision petitioner is Rs.11,818/-. After deductions of Rs.1,082/-, his take home salary is Rs.10,736/- per month. That has been taken into consideration. It is further brought on record that there are no dependents on revision petitioner since his father and mother get family pension respectively. The learned counsel tried to impress upon us that the flat has been taken by obtaining a loan and there is a instalment of Rs.5,428/-. However, it is to be noted that the said flat has been taken not individually by the revision petitioner but jointly alongwith his brother and that liability is a joint liability. Even assuming for a moment that he has to contribute 50%, his share is not exceeding more than Rs.2,500/-. Even that being considered, his take home salary may not be less than Rs.8,000/- and taking into consideration that salary, only an amount of Rs.4,000/- has been granted to the wife and the child. For individual expenses of the petitioner Rs.4,000/- are enough in his hand without any liability. The basic purpose of Section 125 of the Criminal Procedure Code is to avoid hardship of the restituted wife and the children and to provide them immediate help for their maintenance and, therefore, in order to achieve that object, unless we are satisfied

that the test of the perversity as desired under Section 397 of the Criminal Procedure Code is satisfied, this Court will not be inclined to entertain the petition.

We find that there is no substance in the petition. The petition is rejected.

(SMT. NISHITA MHATRE, J.) (S.B. MHASE, J.)